



Signed and Filed: November 21, 2008

A handwritten signature in dark ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re)	Case No: 05-30164 TC
)	
ANTHONY KENNETH BARBARIA and)	
ILLONA DRUCKER BARBARIA, fka)	Chapter 11
ILLONA DRUCKER,)	
)	
)	
)	
Debtors.)	

MEMORANDUM RE MCNUTT LAW GROUP'S FIRST INTERIM FEE APPLICATION

On October 8, 2008, counsel for the chapter 11 trustee (Trustee) filed an application for compensation and reimbursement of expenses (Fee Application). Debtors and Patco Trucking, Inc. have each filed an objection to the Fee Application.

Upon due consideration, and for the reasons stated below, the court overrules the objections to the Fee Application, and allows the fees and expenses in the amounts sought, subject to the agreement between applicant and Trustee to cap their collective fees at \$150,000. This memorandum constitutes the court's findings of fact and conclusions of law.

MEMO RE MCNUTT LAW GROUP FEE APP.

1 **FACTS**

2 On February 13, 2006, the court entered an order approving
3 Trustee's application to employ McNutt Law Group (MLG) as counsel.
4 The Fee Application seeks final allowance of \$150,419.25 in fees
5 and reimbursement of \$9,490.56 in expenses incurred for the period
6 of January 10, 2006 through October 3, 2008. Of this amount,
7 \$13,503.75 concerns fees for services provided regarding the
8 estate's appeal of a prepetition judgment in a state-court action
9 by SFC Leasing against Debtors. Brett Pedersen was specially
10 employed by the estate to prosecute Debtors' appeal of the SFC
11 Leasing judgment.

12 The estate currently holds about \$250,000.

13 Creditor Patco Trucking, Inc. and Debtors each filed an
14 objection to the Fee Application. Patco Trucking objects, not to
15 the amount of fees sought, but rather to the estate's payment of
16 professionals' fees when Patco, a general unsecured creditor, may
17 not be paid in full. Debtors' objection asserts that: (1) the
18 assets in the estate were liquidated rather than reorganized;
19 (2) that MLG made no effort to resolve creditor claims; (3) that
20 fees related to the SFC Leasing appeal should not be allowed
21 because they duplicate work performed by Brett Pedersen; and (4)
22 that the fees charged are excessive relative to fees generally
23 charged by bankruptcy counsel.

24 On November 6, 2008, Trustee filed a response to the
25 objections. Trustee asserts that the real properties owned by the
26 estate were liquidated pursuant to the confirmed plan in this case,
27 that this liquidation generated the bulk of funds brought into the
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1 estate, and that the liquidation was extremely time consuming due
2 to interference with the process by Debtors. Trustee asserts that
3 he has successfully objected to many claims, that he has concluded
4 substantially all claim objections, and that he is ready to make a
5 first and final distribution to creditors. Trustee contends that
6 he cannot make a distribution until he has resolved the large
7 priority claims of the Internal Revenue Service and Franchise Tax
8 Board, and that he has been unable to resolve these claims because
9 Debtors have failed to file their 2004 tax return needed for the
10 taxing authorities to determine the correct claim amounts. In
11 addition, Trustee asserts that he and MLG have agreed to cap their
12 collective fees at \$150,000.¹

13 **DISCUSSION**

14 The court has reviewed the Fee Application. I determine that,
15 other than the fees re SFC Leasing (see below), the compensation
16 sought is reasonable and is for actual, necessary services
17 rendered, and expenses incurred, by MLG on behalf of Trustee. 11
18 U.S.C. § 330(a). I determine that it was appropriate for MLG to
19 bill the estate for its work monitoring the SFC Leasing appeal. I
20 need not reach the issue of whether \$13,503.75 is a reasonable sum
21 for this work, because the stipulation between MLG and the chapter
22 11 trustee to reduce their fees to no more than \$150,000 renders
23 this issue moot.² I determine that the hourly rates charged by MLG,

25 ¹ Although Trustee has not yet filed his fee application, he
26 estimates that his fees and expenses exceed \$60,000.

27 ² The agreement of MLG and Trustee to limit their fees to a
28 collective \$150,000 voluntarily reduces their fee requests by
\$60,000, much more than any reduction this court would make

1 which range from \$250-\$475 per hour for the attorneys, and from
2 \$100-\$150 per hour for legal assistants and paralegals, are
3 reasonable based upon the customary compensation charged by other
4 experienced bankruptcy professionals in San Francisco. I note that
5 Debtors' persistent interference with Trustee's administration of
6 the estate increased the amount of time Trustee and MLG were
7 required to spend on services related to administration of the
8 estate.

9 The Bankruptcy Code requires payment of administrative
10 expenses, such as those of MLG, before payment of non-
11 administrative expenses, such as general unsecured claims. 11
12 U.S.C. §§ 503, 507(a), 1129(b); see Order Confirming Trustee's
13 Modified Plan of Reorganization (Docket No. 359). Accordingly,
14 Patco's objection must be overruled.

15 The court will enter a separate order approving the fees and
16 expenses in the amount sought, subject to the \$150,000 cap on the
17 combined fees of MLG and Trustee.

18 ****END OF MEMORANDUM****

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regarding MLG's work on the SFC Leasing appeal.

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